

No. 86-1566 (2)

Supreme Court, U.S.
E I L E D

MAY 6 1987

JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1986

JACKIE DON COLCLASURE; JUNE COLCLASURE;
THELMA NORINE COLCLASURE; THELMA NOR-
INE COLCLASURE, GUARDIAN OF THE ESTATE
OF RALPH E. COLCLASURE; AND JACKIE DON
COLCLASURE, TRUSTEE,

Petitioners,

v.

KANSAS CITY LIFE INSURANCE COMPANY AND
H. MARSHALL CHATFIELD, SUCCESSOR
TRUSTEE,

Respondents.

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI
TO THE ARKANSAS SUPREME COURT**

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QUESTION PRESENTED FOR REVIEW

SHOULD THE SEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BE APPLIED TO THE STATES THROUGH THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND FURTHER CONSTRUED TO APPLY TO EQUITABLE PROCEEDINGS.

LIST OF PARTIES

The parties in the Supreme Court of Arkansas were as shown herein.

The Respondent, Kansas City Life Insurance Company, is the parent corporation, owning 98.8%, of Sunset Life Insurance Company of America. All other subsidiaries of Kansas City Life Insurance Company are wholly owned.

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**UNITED STATES CONSTITUTIONAL
PROVISIONS INVOLVED**

The Seventh Amendment to the United States Constitution provides: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury, shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the

United States, than according to the rules of common law.”

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides, “ . . . ; nor shall any state deprive any person of life, liberty, or property, without due process of law; . . . ”.

STATEMENT OF THE CASE

In the Statement of the Case of Petitioners, the lower court judge’s reasoning is omitted. The circuit court complaint of Petitioners was transferred to chancery court in that all allegations of said complaint amounted to no more than equitable defenses to the mortgage foreclosure proceeding brought by Respondents.

SUMMARY OF ARGUMENT

The Seventh Amendment to the United States Constitution mandates jury trials only in cases at law and not equity cases; foreclosure of a mortgage is equitable in nature. Due process of law does not mandate jury trial of equitable issues. The limited right to a civil jury trial pursuant to the Seventh Amendment should not be extended to the state via the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

ARGUMENT

Petitioners recognize that the Seventh Amendment to the United States Constitution is not applicable to state action; that it is not controlling as to when and if trial by jury in civil cases is available in state courts. Such a conclusion is inescapable if a system of federalism is to exist in this country. Chief Justice White, writing for a unanimous court stated in *Minneapolis & St. Louis R.R. Co. v. Bombolis*, 241 U.S. 211, 217 (1916) :

So completely and conclusively have both of these principles been settled, so expressly have they been recognized without dissent or question almost from the beginning in the accepted interpretation of the Constitution, in the enactment of laws by Congress and proceedings in the Federal courts, and by state Constitutions and state enactments and proceedings in the state courts, that it is true to say that to concede that they are open to contention would be to grant that nothing whatever had been settled as to the power of state and Federal governments or the authority of state and Federal courts and their mode of procedure from the beginning.

Petitioners next concede that the right to a civil jury trial is not encompassed in that bundle of rights secured by the Fourteenth Amendment to the United States Constitution. *Hawkins v. Bleakly*, 243 U.S. 210 (1917). To argue otherwise would require this Court to conclude that Due Process of Law can be afforded *only* by a jury.

Petitioners' argument that a civil jury trial is a fundamental right is even contradicted by the express language of the Seventh Amendment. That amendment clearly applies only to actions at law and actions in which the value in controversy exceed twenty dollars. If this court

is to assume that a civil jury trial is a "fundamental right" applicable to the states by the Due Process Clause, what justification can exist for denying a jury trial to a divorce litigant or a small claims litigant when less than twenty dollars is in controversy? Such litigants are entitled to due process of law but are clearly not entitled to a jury trial even if this Court were to extend the Seventh Amendment to the states by the Fourteenth Amendment. The answer is obvious: A trial by jury in a civil case is not so "fundamental" as to become a part of "due process of law" necessitating incorporation of the Seventh Amendment into the Fourteenth Amendment.

Further, Petitioners argue that the Arkansas Constitution mandates a jury trial in the instant action. The Arkansas Supreme Court, the final arbiter of Arkansas constitutional law, found Petitioners' argument to be "without merit." Petitioners' Appendix "A" at p. A-2.

Even were this Court to apply the Seventh Amendment to the states through the Fourteenth Amendment, it would not afford Petitioners a jury trial in this matter. The issues presented below were clearly equitable and this Court has recognized that no right to a jury trial attaches in such circumstances. *Curtis v. Loether*, 415 U.S. 189 (1974). Petitioners herein ask this Court for a constitutional interpretation that would have no bearing on the instant case. This Court has consistently refused to issue advisory opinions.

The petition brought herein is a discretionary matter with this Court. S.Ct.R. 17.1. Petitioners have shown no conflict between the decision of the Arkansas Supreme Court below and that of any other state court of last resort or federal court of appeals.

CONCLUSION

Respondents request that this Court deny the Petition for Writ of Certiorari filed herein.

Respectfully submitted,

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